

H O W A R D, Presiding Judge.

¶1 Melissa H. appeals from the juvenile court’s order terminating her parental rights to her son Cristian on the ground that Cristian had been in court-ordered, out-of-home placement for fifteen months or longer. *See* A.R.S. § 8-533(B)(8)(b). She contends that insufficient evidence supported the court’s determination that the Arizona Department of Economic Security (ADES) had made diligent efforts to provide appropriate reunification services, that she had been given the time and opportunity to participate in appropriate services, that she had been unable to remedy the circumstances that caused Cristian to be placed outside her home, and that no substantial likelihood existed that she would be capable of exercising proper and effective care and control in the near future. Melissa also challenges the court’s finding that termination of her parental rights was in Cristian’s best interests.¹

¶2 “[W]e will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). We do not reweigh the evidence but determine only whether any reasonable evidence supports the termination order. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246,

¹Melissa’s statement of facts did not contain any citation to the record as required by Rule 13(a)(4), Ariz. R. Civ. App. P. *See* Ariz. R. P. Juv. Ct. 106(A) (applying Rule 13, Ariz. R. Civ. App. P., to appeals from juvenile court). “We caution counsel that this court may disregard [her] statements of facts if they fail to comply with Rule 13.” *Lansford v. Harris*, 174 Ariz. 413, 417 n.1, 850 P.2d 126, 130 n.1 (App. 1992); *cf. United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (“Judges are not like pigs, hunting for truffles buried in [the record].”).

¶ 20, 995 P.2d 682, 686 (2000). ADES had the burden of proving the alleged statutory ground for termination by clear and convincing evidence. *See* A.R.S. § 8-537(B); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999). It had the burden of proving that termination was in Cristian's best interests by a preponderance of the evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶3 In February 2003, ADES filed a petition alleging Cristian and his three half-siblings were dependent because "there was domestic violence in the home between [Melissa] and her husband and that the husband abused drugs."² It also alleged that Cristian had performed a sexual act or sexual acts with his younger half-brother and that Melissa had dismissed the behavior as "merely normal exploratory play." ADES removed Cristian from the home in April 2003 and placed him in foster care. Melissa admitted the above allegations, and others contained in a third amended dependency petition, and Cristian was adjudicated dependent. The juvenile court approved a case plan of family reunification.

¶4 Although she was initially resistant to services, Melissa ultimately began to comply with her case plan, and in September 2003, the juvenile court granted ADES discretion to return Cristian to Melissa's custody. It urged ADES to exercise its discretion "somewhat reluctantly." Cristian was returned to Melissa's care in April 2004. Shortly

²Melissa consented to the adoption of two of the half-siblings. The dependency petition was dismissed as to the third when custody was awarded to that child's father. None of the three siblings is a party to this appeal.

thereafter, however, ADES reported to the court that Melissa had failed to make any significant progress in therapy, noting among other things that Melissa was “unable to adequately evaluate Cristian’s past behavior,” including his sexualized behavior toward his younger brother. The case manager stated Melissa had “continue[d] to display an inability to manage Cristian’s behavior and set appropriate boundaries,” and she expressed doubt that Melissa would be “able to set boundaries around any sexualized behavior if she [was] unable to address other behavioral issues.” ADES requested the court allow it to remove Cristian again and schedule a severance hearing. The court ordered Cristian removed on May 25, 2004. Following a permanency planning hearing in October 2004, the court ordered ADES to file a motion to terminate Melissa’s parental rights. ADES filed the motion but moved to withdraw it in January 2005, after Melissa’s therapist noted “significant therapeutic progress” and recommended that reunification again be considered. The court granted ADES’s request to withdraw the termination motion.

¶5 Cristian was again placed in Melissa’s care in September 2005, where he remained for approximately the next year. In November 2005, Cristian’s therapist prepared a special report that related to Cristian’s sexually inappropriate behavior, including his sexually aggressive behavior toward other children. She also noted Cristian had reported “feeling like hurting himself” and “wanting to kill himself.” She opined that Cristian was “currently at risk to harm himself or others.” In January 2006, Cristian was diagnosed with an unspecified depressive disorder. He was hospitalized after he was removed from

Melissa's care in August 2006 and subsequently placed in a therapeutic foster home. ADES again recommended the case plan goal be changed to severance and adoption. The juvenile court held another permanency hearing, over the course of several days between October and December 2006, after which it found that Cristian was depressed and had "significant" special needs but that Melissa did "not acknowledge, or has been in complete denial of, those special needs." The court found, however, it did not have enough information to determine Cristian's best interests. It outlined the information it lacked and continued the hearing. Following the continued hearing, the court found "the most appropriate plan, clearly in the child's best interest, [was] termination of parental rights and adoption" and ordered ADES to file a termination motion.

¶6 The juvenile court held a ten-day, contested termination hearing in July and August 2007. It issued a twelve-page, under-advisement ruling that included detailed and exhaustive findings of fact and conclusions of law. The court later signed an order terminating Melissa's parental rights, and this appeal followed.

¶7 Melissa first contends that the juvenile court abused its discretion by finding she had been unable to remedy the circumstances that caused Cristian to be in out-of-home care. She asserts she remedied those circumstances when she "completed domestic violence counseling and obtained an order of protection against [her husband] and subsequently divorced him." She also asserts that she "completed parenting classes and has obtained and maintained stable housing and employment."

¶8 Alternatively, Melissa argues she will be able to parent in the near future, but the circumstances causing the out-of-home placement for the purposes of § 8-533(B) include those that exist at the time of severance. *See Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 22, 152 P.3d 1209, 1213 (App. 2007). At that time, the court found “the primary issues preventing reunification [were Melissa’s] emotional problems (including defensive and explosive behavior), her coping style, and her lack of acknowledgment and support for Cristian’s issues and treatment of those issues,” not domestic violence, housing, or employment. The court was clearly referring to Cristian’s emotional issues and sexual behavior when it found that Melissa “cannot appropriately parent Cristian with his special needs.” The court further found that, although Melissa “has articulated from time to time that she accepts that Cristian has problems with sexualized behavior and depression, her behavior belies those verbalizations. [Melissa’s] behavior demonstrates that she does not accept her son’s problems and will not follow treatment recommended by professionals.”

¶9 Melissa has not challenged these specific findings, and they are amply supported by the record. Melissa repeatedly claimed that reports of Cristian’s sexual behavior and/or depression were exaggerated or false. One of Cristian’s therapists believed Melissa had interfered with her attempts to address these issues with Cristian. In fact, Melissa admitted at the termination hearing that she previously had not accepted “the problem that [Cristian] had, the sexualized behavior,” and that she had failed to give Cristian his prescribed medication. Melissa also testified that she wanted to take classes to learn more

about Cristian's behaviors, claimed she was committed to taking Cristian to therapy, and promised to administer medication. But the juvenile court was in the best position to evaluate her testimony. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) ("A juvenile court as the trier of fact in a termination proceeding is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts."). We find no abuse of discretion in the court's findings that Melissa had failed to remedy the circumstances that caused Cristian to be placed outside her home and that a substantial likelihood existed she will not be capable of exercising proper and effective parental care and control in the near future.

¶10 Melissa raises several overlapping arguments regarding the sufficiency of the evidence supporting the juvenile court's finding that ADES made diligent efforts to provide appropriate reunification services, although she apparently did not challenge the court's findings that the services ADES was providing were adequate during the dependency proceedings. Most of the issues she raises were directly addressed in the court's minute entry ruling. Melissa asserts that the reunification services ADES provided were inadequate because she was not provided family therapy as recommended by an attachment and bonding specialist and included in her case plan. The court found, however, that family therapy had been attempted but that neither Melissa nor Cristian were therapeutically ready for it. The court stated: "It is unknown when, if ever, [Melissa] and Cristian will be ready for family therapy," and it found "no evidence that family therapy would result in reunification." Again

Melissa has not challenged the court’s specific findings, and they are supported by the record, which includes the therapist’s testimony that Melissa had responded angrily to Cristian during therapy and her report “recommend[ing] that the conjoint [therapy] sessions with [Melissa] discontinue as there has been no progress made.”

¶11 Melissa also argues the reunification services she received were inappropriate because Cristian was treated in individual therapy by Sherry Mikels-Romero, the same therapist who had previously treated Melissa and attempted family therapy but with whom Melissa had “stopped therapy . . . because of [a] lack of therapeutic rapport.” She contends that “ethical reasons” should have prevented the same therapist from providing individual therapy to both her and Cristian. The juvenile court, however, found the following:

The CPSA case manager and Sherry Mikels-Romero all acknowledged concerns about possible conflicts with Ms. Mikels-Romero becoming Cristian’s therapist. However, it was believed that it was best at that point for Ms. Mikels-Romero to become Cristian’s therapist and also to assist with family therapy. . . . [Melissa] initially stated she was fine with Ms. Mikels-Romero being the therapist for Cristian. In retrospect, she now objects.

The court further found that Cristian made progress in treatment with Mikels-Romero. Again, the court’s findings are supported by the record, and the court did not abuse its discretion by determining Cristian’s individual therapy with Mikels-Romero was an appropriate reunification service.

¶12 Melissa also suggests that reunification services were inappropriate because she was not offered a “non-offending parent class” to help her understand and monitor

Cristian's sexually inappropriate behavior. She claims that service was recommended by the psychologist who conducted Cristian's psychosexual evaluation. But the psychologist merely testified that such a class "would be among the services that could be considered." ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Nonetheless, the record clearly shows Melissa was offered assistance on these issues.

¶13 Melissa implies she was not given time to address Cristian's sexual behavior through therapy because, between January and November 2005, she was not informed about Cristian's admissions regarding sexual, acting-out behaviors. She also claims that she was "misled" about the nature of the psychosexual evaluation completed on Cristian in 2006. But Cristian's sexual behavior was an issue throughout his dependency, from 2003 through the termination hearing in 2007. Even assuming Melissa reasonably believed for a period of time in 2005 that Cristian had stopped acting out sexually, the juvenile court's implicit determination that Melissa was given adequate time to accept and learn to handle Cristian's behavior remains valid. Melissa cites no support in the record for her assertion she was misled about Cristian's psychosexual evaluation, nor any evidence that this contributed to Melissa's denial about Cristian's problems. Melissa also appears to suggest ADES's failure to provide her with a second opinion about medication Cristian had been prescribed, as well as the timing of reunification services provided for her other children, prevented her from

accepting Cristian's problems. But the record did not require the court to make that finding.

As ADES accurately points out, it provided Melissa

a masters-level therapist for fifteen months, two doctorate-level therapists, two psychological evaluations and a psychological consult, a bonding and attachment assessment, sixteen weeks of parenting instruction, three parent aides to provide visit supervision and hands-on parenting instruction, and conjoint therapy between Mother and Cristian and their respective therapists.

The court did not abuse its discretion by finding ADES had made diligent efforts to provide appropriate reunification services.

¶14 Finally, Melissa contends insufficient evidence supported the juvenile court's determination that termination of her rights was in Cristian's best interests. Contrary to Melissa's contention, it is well established that a best-interests determination need only be supported by a preponderance of the evidence. *See Kent K.*, 210 Ariz. 279, ¶ 41, 110 P.3d at 1022. Evidence that a child will derive "an affirmative benefit from termination" is sufficient to satisfy that burden. *Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d at 945. Although "[t]he existence of a current adoptive plan is one well-recognized example of such a benefit," *id.*, an adoptive plan need not be in place before a court may find termination is in a child's best interests; the court may also consider evidence that the child is adoptable and that severance would provide emotional or psychological benefit. *See Maricopa County No. JS-501904*, 180 Ariz. at 352, 884 P.2d at 238.

¶15 In this case, the juvenile court found “Cristian has thrived” in his foster home: he has developed a bond with his foster brothers, and his “sexualized behaviors have diminished with the additional structure of the foster home.” Although Cristian’s current placement is not an adoptive placement, the court noted that ADES “has many creative means of locating adoptive parents for older children.” Most importantly, however, the court found that “[t]he uncertain nature of [the dependency] proceedings and the return and removal from his mother have taken their toll on Cristian.” The court interpreted Cristian’s statement that he “wants this ‘over with’” to mean that “he wants to be settled and not continue to live in uncertainty about his future.” Although the court did not interpret Cristian’s statement to mean “that he never wants to see his mother again,” Cristian had seen Melissa only once since his last removal, and “Cristian has neither wanted nor agreed to another visit.” The court did not abuse its discretion in determining termination was in Cristian’s best interests.

¶16 The order terminating Melissa’s parental rights to Cristian is affirmed.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge